

**Communications
Workers of America**
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June 24, 1998

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Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**RE: Ex Parte Notice
CC Docket No. 97-211 (Applications of WorldCom and MCI for Transfer of Control of
MCI to WorldCom)**

Dear Ms. Salas:

On June 24, 1998, the Communications Workers of America submitted the attached ex parte written comments to the Policy and Program Planning Division of the Common Carrier Bureau. The ex parte comments provide CWA's views on the MCI Internet divestiture as described in MCI's July 15, 1998 Reply Comments.

In accordance to the Commission's rules, I submit two copies of this notice and the comments.

Sincerely,



Debbie Goldman, Research Economist
Research and Development Department

cc: Michelle Carey

Enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Applications of WorldCom, Inc. and)	
MCI Communications Corporation for)	CC Docket No. 97-211
Transfer of Control of)	
MCI Communications Corporation)	
to WorldCom, Inc.)	

To: The Commission

**Ex Parte Comments of
Communications Workers of America**

**in Response to
MCI Reply Comments
Concerning Divestiture of Internet Business**

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Dated: July 24, 1998

Introduction and Summary

On July 15, 1998, MCI Communications Corporation (MCI) filed with the Commission its Reply Comments Concerning Divestiture of Its Internet Business (“Reply Comments”).¹ In the Reply Comments, MCI described the terms of its Internet sale agreement with Cable & Wireless plc. (C&W). In the Reply Comments, MCI asserts that this sale resolves all public interest concerns related to the Internet market that would result from this merger.

As the record in this proceeding makes clear, a remedial solution to the anticompetitive problems that would have resulted from the merger of the world’s largest and second largest Internet backbone providers requires a complete divestiture of WorldCom’s or MCI’s entire Internet business and customer base.² The Commission must determine that the sale described in the July 15, 1998 Reply Comments is indeed a complete divestiture of all of MCI’s Internet business and customers.

The Commission cannot simply rely on the decision reached by the U.S. Department of Justice (DOJ). The Commission’s statutory obligation in merger reviews is a much broader “public interest” standard than the DOJ’s enforcement obligations under our nation’s anti-trust laws. The Commission must independently determine that *this* sale resolves any public interest problems in

¹ MCI Communications Corporation, Reply Comments of MCI Concerning Divestiture of Its Internet Business, CC Docket No. 97-211, July 15, 1998 (“Reply Comments”).

² CWA Comments on MCI Ex Parte Describing Internet Aspects of Proposed WorldCom and MCI Merger, CC Docket No. 97-21, June 11, 1998 (“CWA Comments”).

the Internet market. Furthermore, the Commission's public review and comment procedure differs from the DOJ's "behind closed doors" investigation procedure. Thus, a public comment period on the adequacy of *this* sale as a remedial solution would provide the *only* opportunity for interested parties to communicate their views to regulators.

The Commission should therefore, establish a Procedural Schedule for effective public comment and review, and should require MCI to provide to the Commission the actual letter agreement signed between MCI and C&W, subject to public review and comment under terms of a Protective Order.

Furthermore, the Commission must ensure that today's Internet market structure in which relatively equal-sized, yet competing networks bargain in a voluntary, cooperative process to establish and to maintain interconnection continues after the merger. This requires three conditions. First, the Commission should establish a forward-looking enforcement mechanism to ensure that the parties abide by the non-compete provisions. Second, the Commission should require the parties to adopt non-discriminatory, public peering policies. Third, the Commission may need to require stronger non-compete provisions.

In addition, the Commission should take this opportunity to establish a rulemaking procedure to identify an appropriate mechanism to collect traffic flow, market share and other data on the Internet marketplace, and to establish a regime of non-discriminatory, public peering policies among all Internet providers.

Finally, MCI's sale of Internet assets does not resolve all public interest concerns related to this merger. MCI and WorldCom continue to fail to meet the Commission's "burden of proof" standard that the merger is in the public interest. MCI and WorldCom have provided no concrete evidence to support their claim that the merger will enhance competition for residential customers in the local exchange. To the contrary, the merger will result in less competition for residential customers, accelerated arbitrage of public subsidies through access charge bypass, and job loss for many MCI workers as the combined company strives to meet its targeted cuts in operating costs. Thus, the merger is not in the public interest and the Commission should not approve MCI's and WorldCom's merger request.

I. The Commission Should Require MCI to Provide the Actual Letter Agreement Signed with C&W, Subject to Public Comment and Review.

The Commission must be able to verify that MCI's description of the sale as provided in the Reply Comments conforms to the actual terms of the sale as described in the contractual letter agreement. Without a copy of the actual letter agreement, the Commission cannot independently verify that the sale will result in a complete divestiture of all of MCI's Internet businesses and customers.³ The Commission should insist upon review of the actual letter agreement--subject to public comment under terms of a Protective Order--to ensure that what MCI reports it is selling is actually what it has contracted with C&W to sell.

The Commission should insist upon this requirement, even though the U.S. Department of Justice (DOJ) has reached the conclusion that the proposed sale resolves the DOJ's concerns regarding any violation of U.S. anti-trust laws in the Internet market. The Commission is under the statutory obligation to conduct an independent investigation of the merger based on a broader "public interest, necessity, and convenience" standard than the DOJ's anti-trust framework. The Commission cannot complete this phase of its investigation of the impact of the merger on the Internet market without an actual copy of the letter agreement between MCI and C&W.

³ Nor has MCI provided the Securities and Exchange Commission with the letter agreement. In its July 21, 1998 SEC Amendment to Form 8-K, MCI included a brief announcement and press release announcing the sale. (<http://www.freedgar.com/search/Vi...SourcePage=FilingsResults&OEMSource=>)

Self-reporting is insufficient because WorldCom and MCI have been less than forthright in the past in describing the terms of the first deal MCI struck with C&W. The day the first deal was announced with C&W, WorldCom's Chief Operating Officer John Sidgmore told the *Wall Street Journal*: "We are selling all of the Internet backbone business. Period. Full Stop. We are selling 100% of the network assets, 100% of the traffic, and 100% of the backbone business." He added, "There's no more flesh to give."⁴ As it turned out, there was a great deal more flesh to give--at least \$1.125 billion more.

Therefore, the Commission should require that MCI provide it a copy of the letter agreement, and subject to a Protective Order, establish a period of public comment on the letter agreement.

II. The Commission Should Establish an Enforcement Mechanism to Preserve a Competitive Market for Internet Connectivity.

The Commission should establish a reporting and oversight mechanism to ensure that MCI abides by the non-compete provisions in the sale. Absent such a mechanism, the Commission relies for enforcement solely on C&W to initiate legal action. One can easily imagine many reasons C&W might decline to take legal action against MCI for contract violation (legal costs, risk of jeopardizing other economic relationships, etc.) Furthermore, in the event that any or all of MCI's transferred customers subsequently leave C&W for a third party, C&W will have no

⁴ Jared Sandberg, "MCI is Selling Wholesale Internet Unit, But European Trust Issues May Remain," *The Wall Street Journal*, May 29, 1998.

legal claim should the combined company compete for those customers now served by a third party. And yet, this last scenario would certainly result in the market power problems raised by CWA and other commentators and which the sale is designed to remedy.

CWA suggests the following forward-looking oversight and enforcement mechanism be established:

1. MCI shall provide to the Commission a list of current ISP, retail, Web hosting, managed firewall, and Real Broadcast Network customers that it is transferring to C&W. C&W shall provide to the Commission on a bi-annual basis a report on the status of those customers, including whether they continue to be customers of C&W. The combined MCI-WorldCom shall provide to the Commission a list of all telecommunications services that it provides to those customers that it is transferring to C&W at the time of the sale and shall update this report on a bi-annual basis, until the conclusion of the period of the non-compete provisions.
2. MCI-WorldCom shall provide to the Commission the number of employees and job titles of employees who are transferred to C&W.
3. MCI shall provide to the Commission a list of the Internet assets actually transferred to C&W, as well as a list of Internet assets owned by the combined MCI-WorldCom at the time of the merger. The combined MCI-WorldCom shall update this report on a bi-annual basis until the conclusion of the period of the non-compete provisions..

4. The combined MCI-WorldCom shall adopt non-discriminatory peering policies on the Internet and shall provide to the Commission for public disclosure a copy of all Internet peering agreements. Many commentators in this proceeding have noted the importance of non-discriminatory, public peering policies to sustain the competitive market structure for Internet connectivity.

5. The combined MCI-WorldCom shall provide to the Commission, on a bi-annual basis, Internet traffic flow statistics.

The Commission should also initiate a rulemaking proceeding to establish a mechanism to collect traffic flow, market share, and other statistics on the Internet marketplace and to implement non-discriminatory, public and open peering policies among all Internet providers.⁵

III. The Commission Should Establish a Procedural Schedule for Public Comment on MCI's Internet Divestiture.

CWA supports the GTE Motion to Establish a Procedural Schedule for public comment of MCI's Internet divestiture. A comment period provides the *only* opportunity for effective public review of the remedial efficacy of the divestiture. The Department of Justice (DOJ) merger review process, by the nature of its legal framework, did not provide an opportunity for public

⁵ Comments by CAIDA Concerning the FCC's Review of the Acquisition of MCI Communications corp. By WorldCom, Inc. April 27, 1998.

comment on the proposed remedy. Thus, absent a public comment period, the broad and diverse group of commentators that have expressed serious concerns to the Commission about the impact of the merger on the Internet market will not have an opportunity to provide the Commission with their views on the adequacy of the sale as a remedy.

Furthermore, as noted above, the Commission reviews mergers under a different statutory framework than does the U.S. Department of Justice. Public review and comment is necessary to assist the Commission in determining if the terms of *this* proposed sale do indeed meet the public interest standard by which it reviews mergers.

In its Order granting extension of the deadline for its Reply Comments, the Commission noted that it would provide “an opportunity for interested parties to respond to these comments.” A procedural schedule is necessary to make good on this commitment. The preservation of competition on the Internet is too important to cut the public review process short.

IV. The Commission Should Require Stronger Non-compete Provisions than Those Reported in the Reply Comments.

To ensure that MCI’s transferred customers do not backslide to the merged MCI-WorldCom, the Commission should strengthen the non-compete provisions reported in the Reply Comments from 6 months (Web hosting and firewall services), 18 months (retail customers) and 24 months (wholesale customers) to a period of three to five years. This would ensure that MCI’s Internet

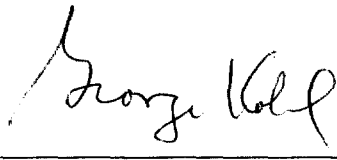
customers, who will likely continue to purchase long distance and other data services from the merged MCI-WorldCom, will not migrate back to the merged entity before C&W has had an opportunity to develop a significant customer relationship on which to compete effectively to retain the customers. Absent these strengthened non-compete provisions, the sale may not preserve today's Internet competitive market structure in which no one backbone provider dominates interconnection by virtue of the size of its customer base.

V. Conclusion

This merger review process provides the Commission the only opportunity to preserve a competitive market structure on the Internet. The terms of the MCI Internet sale are key to preserving this market structure. The Commission, therefore, must independently verify that MCI is indeed transferring its entire Internet business and customers to C&W. The Commission should establish a formal review and comment schedule seeking public comment on this sale. In addition, the Commission should strengthen the non-compete provisions and establish a forward-looking enforcement and verification mechanism to ensure that MCI's Internet customers do not backslide to MCI before C&W has an opportunity to establish a solid customer relationship. The Commission should also require the combined MCI-WorldCom to adopt non-discriminatory, open peering policies and to report Internet traffic flow statistics to the Commission. Finally, the Commission should initiate a rulemaking to establish a mechanism for statistical reporting on the Internet market and to establish a regime of open, non-discriminatory peering policies.

Respectfully Submitted,

Communications Workers of America

By 

George Kohl

Senior Executive Director, Research and Development

Dated: July 24, 1998